

YAO-3950



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Yoshihisa Nagano et al. : Art Unit 2815  
Serial No.: 09/103,873 : Examiner: J. Diaz  
Filed: June 24, 1998  
For: SEMICONDUCTOR  
DEVICE AND METHOD  
FOR FABRICATING THE  
SAME

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PETITION UNDER 37 C.F.R. § 1.182

REQUESTING FINAL OFFICE ACTION BE MADE NON-FINAL

Assistant Commissioner for Patents  
Washington, DC 20231

S I R :

This is a request under 37 C.F.R. § 1.182 that the Final Office Action dated September 24, 2002 be made non-final.

An Office Action mailed on April 9, 2002 rejected Claims 1-10 and 29-31 under 35 U.S.C. § 103(a) "as being unpatentable over Applicant's Specification in view of Matsuura et al." (U.S. Patent No. 5,132,774).

On April 29, 2002, Applicants' representatives conducted a telephone interview with the Examiner in charge of the above-identified application. During the interview, the Examiner agreed that existing claims 2, and 30-31 included features not disclosed by the art of record. This is indicated in the Interview Summary (a copy of which is attached) drafted by the Examiner. More specifically, the Interview Summary provides that the "Examiner suggests to narrow the claim 1 by further describing the 'second interlayer insulating film' and/or including the limitation recited in claims 30-31..." and that "Applicant states that claim 2 is not shown by the references... [and the] Examiner agrees with the Applicant that any further response will be considered and examined in view of a further search."

During the interview, the Examiner indicated that if claim 1 was amended to include the features of any of claims 2, 30, or 31 then an

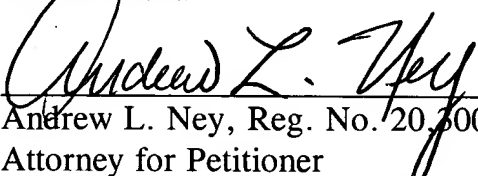
additional search would be conducted. Relying on the position taken by the Examiner during the interview, Applicants amended claim 1 to include the features of claim 2 in the response filed on July 9, 2002. In this response (a copy of which is attached), Applicants summarized the interview and repeatedly reminded the Examiner that if a further search revealed additional relevant art, then the rejection should be made non-final.

A final Office Action was mailed on September 24, 2002, which repeated the previous rejection of claims 1-10 and 29-31 under 35 U.S.C. § 103(a) "as being unpatentable over Applicant's Specification in view of Matsuura et al." Applicants were surprised by the rejection of the claims in light of the interview. More surprising, however, was that the rejection of the claims was made final. Applicants representatives contacted the Examiner and requested that the rejection be made non-final, however, the Examiner would not agree. Because Applicants amended the claims and filed the response on July 9, 2002 in reliance on the interview, Applicants believe that the issuance of a final Office Action was improper.

Therefore, it is respectfully requested that the Final Office Action be withdrawn and a non-final Office action be issued.

Respectfully submitted,

RatnerPrestia

  
Andrew L. Ney, Reg. No. 20,500  
Attorney for Petitioner

Dated: October 30, 2002

Enclosures: Copy of Amendment filed and Copy of Interview Summary

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The Assistant Commissioner for Patents is hereby authorized to charge payment to Deposit Account No. 18-0350 of any fees associated with this communication.

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on:

10/30/02  
Are Kinter